

amounts paid for subsistence by the United States Government (directly or by contract) to any nonresident alien individual who is engaged in any program of training in the United States under the Mutual Security Act of 1954, as amended (22 U.S.C. chapter 24). This rule shall apply even though such amounts are subject to tax under section 871. Any exemption from withholding pursuant to this paragraph (e) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6041 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (e) is not a determination that the amounts are not fixed or determinable annual or periodical income.

(f) *Failure to receive withholding certificates timely or to act in accordance with applicable presumptions.* See applicable procedures described in § 1.1441-1(b)(7) in the event the withholding agent does not hold an appropriate withholding certificate or other appropriate documentation at the time of payment or does not act in accordance with applicable presumptions described in paragraph (a) (2)(i), (2)(ii), or (3) of this section.

(g) *Effective date—(1) General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a Form 4224 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 4224 or 8233 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event will such form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 4224 or 8233 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three

sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 6500, 25 FR 12075, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.1441-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.1441-4T Exemptions from withholding for certain effectively connected income and other amounts (temporary).

(a)(1) through (a)(2) [Reserved] For further guidance, see § 1.1441-4(a)(1) through (a)(2).

(3) *Income on notional principal contracts—(i) General rule.* Except as otherwise provided in paragraph (a)(3)(iii) of this section, a withholding agent that pays amounts attributable to a notional principal contract described in § 1.863-7T(a) or § 1.988-2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under § 1.1461-1(b) and (c) reporting the income that it must treat as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must treat the income as effectively connected with the conduct of a U.S. trade or business if the income is paid to, or to the account of, a qualified business

unit of a foreign person located in the United States or, if the payment is paid to, or to the account of, a qualified business unit of a foreign person located outside the United States, the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a trade or business within the United States. Income on a notional principal contract does not include the amount characterized as interest under the provisions of § 1.446-3(g)(4).

(ii) [Reserved] For further guidance, see § 1.1441-4(a)(3)(ii).

(iii) *Exception for specified notional principal contracts.* A withholding agent that makes a payment attributable to a specified notional principal contract described in section 871(m), or § 1.871-16T that is not treated as effectively connected with the conduct of a trade or business within the United States shall have an obligation to withhold on the amount of such payment that is a dividend equivalent.

(b) through (g) [Reserved] For further guidance, see § 1.1441-4(b) through (g).

(h) *Effective/applicability date.* This section applies on or after January 23, 2012.

(i) *Expiration date.* The applicability of this section expires on January 16, 2015.

[T.D. 9572, 77 FR 3110, Jan. 23, 2012; 77 FR 13969, Mar. 8, 2012]

§ 1.1441-5 Withholding on payments to partnerships, trusts, and estates.

(a) *In general.* This section describes the rules that apply to payments made to partnerships, trusts, and estates. Paragraph (b) of this section prescribes the rules that apply to a withholding agent making a payment to a U.S. partnership, trust, or estate. It also prescribes the obligations of a U.S. partnership, trust, or estate that makes a payment to a foreign partner, beneficiary, or owner. Paragraph (c) of this section prescribes rules that apply to a withholding agent that makes a payment to a foreign partnership. Paragraph (d) of this section provides presumption rules that apply to payments made to foreign partnerships. Paragraph (e) of this section prescribes rules, including presumption rules, that apply to a withholding agent that

makes a payment to a foreign trust or foreign estate.

(b) *Rules applicable to U.S. partnerships, trusts, and estates—(1) Payments to U.S. partnerships, trusts, and estates.* No withholding is required under section 1.1441-1(b)(1) on a payment of an amount subject to withholding (as defined in § 1.1441-2(a)) that a withholding agent may treat as made to a U.S. payee. Therefore, if a withholding agent can reliably associate (within the meaning of § 1.1441-2(b)(vii)) a Form W-9 provided in accordance with § 1.1441-1(d)(2) or (4) by a U.S. partnership, U.S. trust, or a U.S. estate the withholding agent may treat the payment as made to a U.S. payee and the payment is not subject to withholding under section 1441 even though the partnership, trust, or estate may have foreign partners, beneficiaries, or owners. A withholding agent is also not required to withhold under section 1441 on a payment it makes to an entity presumed to be a U.S. payee under paragraphs (d)(2) and (e)(6)(ii) of this section.

(2) *Withholding by U.S. payees—(i) U.S. partnerships—(A) In general.* A U.S. partnership is required to withhold under § 1.1441-1 as a withholding agent on an amount subject to withholding (as defined in § 1.1441-2(a)) that is includible in the gross income of a partner that is a foreign person. Subject to paragraph (b)(2)(v) of this section, a U.S. partnership shall withhold when any distributions that include amounts subject to withholding (including guaranteed payments made by a U.S. partnership) are made. To the extent a foreign partner's distributive share of income subject to withholding has not actually been distributed to the foreign partner, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that the statement required under section 6031(b) is mailed or otherwise provided to the partner or the due date for furnishing the statement.

(B) *Effectively connected income of partners.* Withholding on items of income that are effectively connected income in the hands of the partners who are foreign persons is governed by section 1446 and not by this section. In